

**Statement of Senator John D. Rockefeller IV**  
**March 23, 2000**

**Senate Committee on Commerce, Science and Transportation**  
**hearing on Surface Transportation Board 15-Month**  
**Merger Moratorium and Rulemaking Proceeding**

Good morning and thanks to Senator Hutchison for holding this very timely hearing.

This has been a remarkable couple of weeks and months in the railroad industry and at the Surface Transportation Board. I suspect that it's too early for Chairman Morgan, let alone any of us, to have fully digested and analyzed all that has happened and is happening. But I appreciate the Chairman's willingness to come before this Committee so quickly to at least provide us with an initial report on how the Board got here and where it's going.

There are really three points that I'd like to make in my opening remarks and then I'll look forward to hearing Ms. Morgan's testimony and participating in the Q&A.

First, I want to unequivocally commend the Board and the Chairman for the very bold **C** very, very bold **C** decision last Friday to impose a 15-month moratorium on major rail mergers and proceed with a rulemaking to develop new merger standards and procedures.

This was not an easy step to take. Already the Burlington Northern and Canada National railroads have gone to court to seek a stay of the STB's decision, and the Board is likely to end up in litigation over the question of whether a moratorium is within the scope of their statutory authority.

I am no legal expert, but I can tell you that I certainly believe this action is within the Board's authority **C** and, in fact, reflects its statutory mandate to protect the public interest and prevent irreparable harm.

Chairman Morgan noted in her own written comments that this was a tough decision but that **A** the current problems facing the rail sector are so extraordinary that an unprecedented response is necessary.<sup>@</sup> As Ms. Morgan and many of my colleagues know, I have held that exact view for some time.

I want Ms. Morgan and the Board to know at the outset how glad I am to be sharing the same vantage point with you today, and how much I want and intend to call on your expertise to get us all through this very challenging period.

Second, I want to share publicly a request that Senator Dorgan and I have made today to Chairman McCain and Subcommittee Chairman Hutchison for this Committee to undertake a legislative effort on the challenge of further rail consolidation.

We have asked for today's hearing to be just the first in a series of hearings before the Committee this year, and we are reaching out to all of our colleagues to ask them to join us in putting together legislation to address issues and problems and gaps in the current law that are identified in those future hearings.

Just as the STB sees these as extraordinary times and is taking extraordinary action, this Committee and this Congress need to step up to the plate.

We in Congress simply can't stand by in the face of a final, potentially crushing round of major rail mergers that would render our economy dependent on just two transcontinental railroads. And asking or expecting the STB to do our work for us is equally unacceptable.

We need to work together with one another, with the STB, with rail employees and customers, and with those in the railroad industry who are ready to accept the fact that the Staggers Act needs to be modified **C** not overhauled, but modified **C** to bring us safely into the 21<sup>st</sup> Century.

Finally, I would point out that underlying the current debate seems to be an assumption that we are headed to the next round of mergers and that the industry must inevitably settle into just two transcontinental railroads. I want to be clear in my own remarks that I, for one, am not prepared to accept that assumption.

Already recent mergers have concentrated 90 percent of rail freight revenues into four hands **C** UP-SP, CSX, NS, and BN **C** and consolidation doesn't seem to have brought any of the promised customer and financial benefits.

Based on recent stock prices, CSX and NS are worth less now than what they paid for Conrail three years ago. Mergers are supposed to result in growth, yet across the country rail mergers have been accompanied by losses of more business to trucks.

Customers, employees, and the financial markets have lost all faith in this industry **C** something I have not seen in any other industry in the time I have served on this Committee.

More than anything else, my experience with rail service in West Virginia makes me extraordinarily leery of having only two transcontinental railroads in this country.

As recently as this month, I have been trying to facilitate a new dialogue between chemical companies in West Virginia and the railroad to which they are captive. And the railroad has said literally said to these companies, the only way you'll ever get competitive rail service and rates is through government intervention.

Well, that's certainly not the kind of dialogue I had in mind C and it's not the kind that takes place in a competitive, healthy environment where there is a balance in bargaining power.

Senator Hutchison, rail customer captivity may not be as big a problem in Texas as it is in West Virginia. Some 90 percent of West Virginia chemical plants are captive to a single railroad, and I'm told that just over 50 percent of your chemical plants suffer the same fate. But 50 percent is still too many C and you would surely reach my 90 percent range if we had only two railroads across the continent.

Some seem to think that a two-railroad continent is inevitable C and perhaps at some point it is essential for the financial viability of the industry. But as I said to the STB two weeks ago, we are no where near ready for that. We need to step back and take a long, hard look at this industry C at where we all went wrong and how to set things right again.

The job of developing new rules and standards should not C must not C be left entirely to the STB. We should be the ones setting the new direction. The STB should be focusing on implementing our laws and mandates.

Senators Hutchison, Dorgan, Burns and I have been asking our colleagues to act on this issue that for some time, and we nearly waited to long.

I implore my colleagues to join us in a serious effort to tackle rail issues through the legislative process C and I thank and applaud the STB for giving us the time to do so by imposing this moratorium.

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